

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

T.L. DIAMOND & CO., INC. and
THEODORE L. DIAMOND,

Defendants.

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) Civil Action No. _____
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COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency, files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"). The United States seeks to recover response costs from T.L. Diamond & Company, Inc. ("TLD") and Mr. Theodore L. Diamond ("Mr. Diamond"), the President of TLD (collectively "Defendants") incurred or to be incurred by the United States for response activities undertaken in response to

the release and threatened release of hazardous substances from a facility located in the City of Hillsboro, Montgomery County, Illinois, known as the Eagle Zinc Superfund Site (the "Site"). The United States also seeks a declaratory judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), declaring that the Defendants are liable for any further response costs that the United States may incur as a result of releases or threatened releases of hazardous substances from the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and the parties hereto, pursuant to Sections 106(a), 113(b), and 113(e) of CERCLA, 42 U.S.C. §§ 9606(a), 9613(b), and 9613(e), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section and 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances from the Site occurred in this district.

THE DEFENDANTS

4. Each Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. The Defendants are current owners and/or operators of the Site, within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and/or were owners and/or operators of the Site when hazardous substances were disposed of at the Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

GENERAL SITE DESCRIPTION

6. The Site is an industrial parcel located on approximately 132 acres of land in Hillsboro, Illinois.

7. From as early as 1913 until 2003, the Site was used to manufacture zinc oxides. This required smelting - or roasting - zinc ore, often with coal. The smelting process created waste residues that contain zinc, cadmium, arsenic, and other compounds that are "hazardous substances" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

8. On September 19, 2007, EPA listed the Site on the National Priorities List, a list of the nation's most contaminated sites, 72 Fed. Reg. 53,463.

FIRST CLAIM FOR RELIEF – CERCLA SECTION 107(a)

9. The Site is a "facility," within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

10. At times relevant to this action, there have been "releases" and "threatened releases" of "hazardous substances" into the environment from the Site, within the meaning of CERCLA Sections 101(14), 101(22), and 107(a), 42 U.S.C. §§ 9601(14), 9601(22) and 9607(a).

11. The United States has incurred "response costs," within the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25), in responding to releases and threatened releases of hazardous substances at and from the Site.

12. The response costs were incurred by the United States in a manner not inconsistent with the National Contingency Plan, which was promulgated under CERCLA Section 105(a), 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

13. The Defendants are within the class of liable persons described in CERCLA Section 107(a)(1) and/or 107(a)(2), 42 U.S.C. § 9607(a)(1) and/or 9607(a)(2), because they are owners and/or operators of the Site, and/or because they were owners and/or operators of the Site when hazardous substances were disposed of there.

14. Pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), the Defendants are jointly and severally liable to the United States for all response costs incurred and to be incurred by the United States in connection with the Site, including enforcement costs and prejudgment interest on such costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Enter judgment in favor of the United States and against the Defendants, jointly and severally, for all costs incurred by the United States, including prejudgment interest, for response actions in connection with the Site;

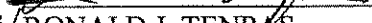
2. Enter a declaratory judgment in favor of the United States and against the above-named Defendants pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that those Defendants are jointly and severally liable for future response costs incurred by the United States;

3. Award the United States its costs of this action; and

4. Grant such other and further relief as the Court deems just and proper.

Dated: March 28, 2008

Respectfully submitted,


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